

Introduction

In accordance with the City Council's direction at its June 22, 2004, and June 29, 2004 meetings, the Office of the City Attorney and the Office of the City Auditor jointly reviewed the Converged Network System Request for Proposal (RFP) process. The Office of the City Auditor conducted its part of the review in accordance with generally accepted government auditing standards. The Office of the City Attorney and Office of the City Auditor limited the review to the questions specified in the Objectives, Scope, and Methodology section of this report.

Background

New Civic Center (NCC) Technology

In December 2002, Information Technology Department (ITD) staff began analysis and budgeting for the New Civic Center (NCC) technology, including formulating a network design. Staff also reviewed various telephony options for the NCC. According to staff, they did not research a converged network solution at this time. Staff also noted they asked Cisco Systems, Inc. (Cisco) for assistance on developing budget estimates and the required technology.

In or about January 2003, staff began looking at the Converged Network solution for the NCC. This included contacting various vendors to obtain budgetary numbers. By August 2003, staff started working on the base network design in reliance on a network standardization effort by the Information Technology Planning Board (ITPB) and Cisco published design guidelines. Cisco was involved with staff in designing the Converged Network System. Cisco also provided City staff with a Bill of Materials (BOM) for the Converged Network System. Furthermore, Cisco provided multiple iterations of the BOM to suit the City's changing needs.

On February 3, 2004, the City Council approved funding for NCC technology purchases, which specifically included the Converged Network System procurement including the services of the systems integrator, and directed staff to return to the City Council for each procurement recommendation.

Converged Network RFP

City staff developed and issued a Request for Proposal (RFP) on March 15, 2004 for a Converged Network System for the NCC. The RFP focused on the overall scope of a converged network implementation and consisted of the following operations:

1. Installation of a switched Internet Protocol (IP) based network
2. Installation of a Voice Over Internet Protocol (VoIP) telephone system
3. Implementation of a fail over plans for the converged network solution
4. Implementation, according to best practices, for these items including system security.

On March 15, 2004, the City advertised the RFP on the City's Internet "Bid-Line" and distributed it to 38 companies. The RFP required that all interested parties participate in a mandatory pre-proposal conference. There were 23¹ parties that participated in the pre-proposal conference. Six companies submitted proposals by the April 16, 2004 deadline. Staff extended the proposal deadline by one week from the original April 9, 2004 deadline when some of the interested proposers requested extensions. All six proposers presented a Cisco-based solution.

To select a proposed vendor, the City used an RFP that stipulated a four-phase evaluation process. Phase 1 – Minimum Requirements Review; Phase 2 – Qualifications, Experience and Technical Approach; Phase 3A– The Evaluation Team² observed

¹ One of the participants was Cisco, which according to ITD staff, stated their intention not to bid (Cisco was not under an obligation not to bid). Another participant was the Chairman of the Small Business Development Commission.

² The Evaluation Team included an IT Communication Technician, IT Information Systems Analyst, IT Network Operations Manager, IT E-Government Program Manager, two IT Supervising Applications Analysts, and an external IT professional.

demonstrations from all three vendors and interviewed each of the three finalists and Phase 3B –The vendors were graded on the criteria from the vendor responses in the cost proposals and the technical clarifications; and Phase 4 - Final Technical Requirements and Cost Proposals.

Upon conclusion of the three phases, the RFP Evaluation Team ranked the three vendor finalists. The Evaluation Team ranked and recommended Unisys as the top vendor to the Senior Staff Team³ working on this project with SBC and Norstan as number two and three, respectively.

On June 16, 2004, the ITD and General Services Department (GSD) presented a joint memorandum to the City Council recommending that the City Council adopt a resolution “authorizing the City Manager to negotiate an agreement with Unisys for the purchase of a Converged Data Network and Telephony System in an amount not to exceed \$8,030,127 including all hardware, software and professional services required to implement the system.”

SBC Complaints

In multiple communications after the June 16, 2004 staff memorandum to the City Council, SBC formally protested the Converged Network RFP. These complaints were as follows:

- 1) The RFP criteria were not followed and staff’s report to the City Council failed to accurately explain how each of these criteria was evaluated;
- 2) A statement in the staff report that described SBC as failing in the key project assumptions category;
- 3) The price the City staff attributed to SBC in the report was significantly higher than what SBC had submitted;
- 4) A conflict of interest might exist in connection with the RFP, specifically relating to the former Deputy CIO’s current employment with Unisys;

³ The Senior Staff Team for this project included a Deputy City Manager, the City’s Chief Information Officer (CIO), and the GSD Director.

- 5) The Cisco standards adopted by the IT Planning Board had never been updated; and
- 6) Because a significant portion of the RFP includes equipment purchases, the RFP is really a competitive equipment bid that the City is required to award to the lowest responsible bidder under SJMC Chapter 4.12.

During its June 22, 2004 meeting, the City Council approved a motion that included direction to the City Attorney to investigate allegations of conflicts of interest that were raised during the City Council meeting. During its June 29, 2004 meeting, the City Council approved a motion directing the City Auditor to work with the City Attorney on reviewing the RFP process for the NCC Converged Network System.

Objectives, Scope, And Methodology

We reviewed the following matters relating to the Converged Network System RFP process:

1. Was the standardization on Cisco equipment and other system requirements in the RFP in accordance with San Jose Municipal Code (SJMC) requirements?
2. What was Cisco's participation in the RFP process?
3. Did a former City Deputy CIO violate the City's revolving door policy after leaving City employment in September 2003?
4. Was the RFP evaluation process fair, objective, and accurate?
5. Was the City's analysis of the final three vendors' cost proposals complete and accurate?
6. Was the RFP process for the procurement of "General Services" the appropriate procurement process?

In addressing these questions we interviewed City staff that were integral participants in the Converged Network System RFP project, the Senior Staff Team, representatives from TMG and The Application Group that assisted in the evaluation process, SBC representatives, the former Deputy CIO, Cisco representatives, and the Chairman of the

Small Business Development Commission. We also interviewed representatives of companies that participated in the March 26, 2004 pre-proposal conference, but did not submit a bid. We also reviewed the SJMC, the City's Contracts Administrative Manual, the Purchasing Administrative Manual, the City Request for Proposal Procedures Manual, and the American Bar Association (ABA) Model Procurement Code. We also reviewed the City's analysis of the final three vendors' Converged Network System cost proposals, the vendors' proposals submitted in response to the RFP, the scoring methodologies and scoring sheets City staff used to rank the vendors and various staff reports on the project, and E-Mail correspondence involving City staff assigned to this project.

Was The Standardization On Cisco Equipment And Other System Requirements In The RFP In Accordance With SJMC Requirements?

Based upon our review of all available documents and discussions with authoritative City staff, we have concluded that the City's standardization on Cisco equipment and other system requirements in the RFP was not in accordance with SJMC Section 4.12.149 for two reasons. First, there was no documentation to show that the GSD Director determined that standardization was required for the procurement. Second, the City did not have documentation to demonstrate that standardization would produce significant cost savings.

RFP 03-04-08 for the NCC Converged Network System, requires that proposals comply with City technical standards. RFP Section 3.22 states:

In the [sic] January 2000, the Information Technology Planning Board (ITPB) was formed. In August 2000, the Mayor and City Council approved the City of San Jose's Information Technology Master Plan. In June 2003, cross-departmental groups developed information technology standards for the City, which were subsequently approved by the ITPB. The ITPB has the authority to establish information technology standards, policies and guidelines by way of their charter, which is included in the City's Information Technology Master Plan.

Section 3.22 of the RFP then lists all of the relevant City of San Jose hardware and software standards, many of which are Cisco products.

The RFP also specifies that each “[P]roposer must be an authorized Silver/Gold/Platinum [sic] Cisco Partner⁴ and must have an IP Telephony-Revised Specialization Certification. The RFP also requires proposers to have VPN Security Specialization, ATP-IPCC Express, and IP Call Center Express. (RFP Sections 1.3.C and 3.11.A.)⁵

The RFP included an extensive BOM as Attachment E to the RFP. The BOM specified over 18,000 items of hardware and software required for the Converged Network System in the NCC, most of the hardware being Cisco products. Other sections of the RFP that require Cisco products and services or Cisco-equivalent products and services are listed in Attachment I hereto.

The RFP includes language that would allow a proposer to substitute hardware and software products that are different than those specified in the RFP. Section 3.4.A of the RFP states:

Proposer adheres to City hardware and software standards as described in section 3.21.⁶ In cases where products other than City standards are proposed, a business case supporting the choice is required.

However, the RFP at Section 3.4.B also states that the “Proposer must propose tight integration with Cisco IOS that utilizes the full functionality and robustness of the feature set(s) found in Cisco’s networking equipment.” RFP Section 2.2 says hardware and software must utilize City standards identified in Section 3.21⁷. RFP Section 3.4.D says the City will not pursue custom development or extensive product customization.

⁴ Interviews with Cisco Systems employees and lawyers, and with SBC, as well as information from www.cisco.com, confirmed that there is no “platinum” partner status conferred by Cisco upon its authorized resellers. Instead, the Cisco partnership levels are premier, silver and gold.

⁵ From interviews with Cisco employees and from information obtained on the Cisco website, we determined that Cisco confers partnership status on Cisco resellers when resellers meet certain specified criteria, including the completion of various levels of training through the Cisco certification program and expertise in relevant areas of specialization. Whether Cisco confers premier, silver or gold partner status varies depending on sales of Cisco equipment, customer service and satisfaction, and amount and types of specialized training.

⁶ This reference in RFP Section 3.4.A to Section 3.21 of the RFP appears to be in error because the City’s standards are found instead in RFP Section 3.22.

⁷ This reference in the RFP to Section 3.21 also appears to be in error because the City’s standards are in RFP Section 3.22.

Given, (1) the clearly expressed preference in the RFP for Cisco products, (2) that proposers were required to document and submit a business case for each item where products that are different than the City standard are proposed, and (3) the fact that proposers were originally only provided with two weeks after the pre-proposal conference to respond to the RFP, which staff extended to three weeks as the result of concerns of potential proposers, that there was not sufficient time to respond. One specific concern was that no proposer would have sufficient time to attempt to substitute products and make a business case for equipment substitutions. These issues were expressed to the Auditor's Office by several potential proposers who did not submit proposals on this RFP, and was echoed by a Channel Account Manager from Cisco who represents several Cisco partners and assists them in bidding on projects.

Additionally, allowing for substitutions in the RFP is inconsistent with staff's position that the City is standardized on Cisco equipment which, if Cisco standardization had been appropriately authorized for the RFP, would not allow for any substitution.

In interviews, the City's CIO, Deputy CIO, E-Government Program Manager, Supervising Applications Analyst, Network Operations Manager, and GSD Director, all explained that the standardization of information technology equipment, where deemed desirable, was ITPB approved and memorialized in the undated document entitled "Notes from Network Workshop" attached hereto and incorporated herein by reference as Attachment II.

The "Notes from Network Workshop" document includes a number of standardizations requiring the use of Cisco equipment. For Local Area Network, switches and routers are required to meet IEEE standards and "Cisco @ this time*," firewalls must be a Cisco-based solution, and virtual private network is Cisco. For Wide Area Networks, routers are required to meet IEEE standards and be "Cisco @ this time*." For Remote Access, wired access must include a Cisco-based solution. Management Software may be either Cisco Works or Sun Management. The term "IEEE" means that the equipment meets the standards recommended by the Institute of Electrical and Electronics Engineers (IEEE),

as published by the American National Standards Institute. The asterisk* after the notation that routers and switches are “Cisco @ this time*” refers to a footnote in the document which states:

Cisco is the current standard for routers and switches. It was recognized by the committee that there may either be a need or preference to competitively bid these items in the future. Most likely this would be done when the organization was pursuing a large, single purchase. (Emphasis added.)

In the NCC Converged Network System RFP, routers and switches, among other items, that are currently listed in the RFP require Cisco products. However, there is no documentation to show that there was any analysis or consideration given to competitively bidding these items for the NCC Converged Network System, which qualifies as “a large, single purchase” pursuant to the ITPB standardization effort.

Also, despite the specification of Cisco brand IP telephony equipment in the RFP (RFP Attachment E, pp. 8-13), there is no ITPB-recommended or other City standard for telephony equipment. An ITD staff member acknowledged the lack of such a standard in a January 22, 2004 E-Mail message. Specifically, the Supervising Applications Analyst sent an E-Mail message to the E-Government Program Manager warning of possible problems with the failure to appropriately standardize telephony equipment in the RFP.⁸

The Information Technology Master Plan, dated May 2000, that the City Council approved on September 5, 2000⁹, broadly specifies the functions of the ITPB. The May 2000 Information Technology Master Plan does not grant authority to the ITPB to do anything with regard to the standardization of equipment purchases for the City except the review and prioritization of enterprise-wide information technology investments for the City Manager’s review (Information Technology Master Plan, March 2000, Appendix A, ITPB Charter). This is consistent with a flow chart attached to the Master Plan which indicates that the role of the ITPB is to “recommend IT policies and standards” (Information Technology Master Plan, March 2000, Appendix B, IT Governance

⁸ In his message, the Supervising Applications Analyst suggests going to the ITPB to standardize the RFP telephony purchase.

⁹ The ITPB also existed prior to Council adoption of the Information Technology Master Plan as a committee formed by the City Manager apparently, in significant part, to “oversee the development of this [Master] [P]lan and its implementation” (Information Technology Master Plan, May 2000, p. 2).

Organizational Structure). The most recent version of the ITPB Charter authorizes the ITPB, among other powers, to “adopt and support the information technology guidelines, standards and policies” (ITPB Charter, revised March 25, 2002). However, none of the apparent powers of this administrative committee preclude or replace compliance with the SJMC requirements for standardization of equipment purchases.

City staff’s reliance on the ITPB standardization effort as authorizing the standardization of materials and equipment to be purchased with the RFP for the NCC Converged Network System is misplaced. Regardless of the ITPB-recommended information technology standards, all City purchases of equipment and materials where standardization is desired are required to comply with the SJMC standardization requirements.

SJMC Section 4.12.149 authorizes the GSD Director to standardize with respect to the purchase of supplies, materials, and equipment in the following manner:

4.12.149 Standardization.

Where the director¹⁰ has determined that it is required by the health, safety or welfare of the people or employees of the city or that significant costs savings have been demonstrated, standardization of supplies, materials, or equipment is permitted and the specifications may limit the purchase to a single brand or trade name. Among the factors that may be considered in determining to standardize on a single brand or trade name are that:

- A. Repair and maintenance costs would be minimized;
- B. User personnel training would be facilitated thereby;
- C. Supplies or spare parts would be minimized;
- D. Modifications to existing equipment would not be necessary;
- E. Training and repair of maintenance personnel would be minimized;
- F. Matching existing supplies, materials or equipment is required for proper operation of a function or program.

(Emphasis added.)

¹⁰ The term “director” is defined in SJMC Section 4.12.002 as “the director of general services or such other director designated by the city manager to administer this chapter.” Chapter 4.12, entitled “Purchases of Supplies, Materials and Equipment,” specifies when competitive bidding is required for such purchases and the exceptions to the competitive bidding requirements. We found no evidence that any one other than the GSD Director has been authorized to administer this Chapter of the SJMC affecting all purchases of equipment, materials and supplies.

Other than the ITPB-approved standardization list entitled “Notes from Network Workshop,” there is no documentation to support that the ITPB’s equipment standardization effort was supported by the SJMC required cost analysis for specific equipment purchases. There is no documentation to evidence that the standardization of equipment to be purchased as part of the RFP was approved in the manner the SJMC requires.

SJMC Section 4.12.149 specifies requirements that must be articulated as the basis for any standardized equipment purchase. In the instant case, because there are no health, safety and welfare reasons for the standardized equipment purchase in the RFP, the City is required to support the standardized purchase with a demonstration of “significant cost savings” (SJMC Section 4.12.149). There is no evidence that City staff demonstrated a significant cost benefit from the standardization of the numerous equipment and materials purchases that are incorporated into the NCC Converged Network System RFP.

In a July 15, 2004 interview with the CIO, she stated that she did not know there were any standardization requirements in the SJMC. The CIO said that if the SJMC requires the GSD Director to approve of the standardization, it appears that the GSD Director’s participation in the ITPB satisfies the SJMC requirement for approval. In the same interview, the CIO stated that she did not perform any cost analyses to support the standardizations that the ITPB approved. Rather, she was concerned about ITD staff retraining in that staff is either Cisco-trained or has on-the-job experience maintaining and troubleshooting Cisco equipment. The CIO also expressed concern that having multiple vendors’ parts and equipment in the Converged Network System would complicate establishing responsibilities for failures and honoring equipment warranties.

During her July 15, 2004 interview, the CIO provided a notebook of information, focused upon the IT Department’s NCC telephony considerations. The first item in the notebook is a cost comparison of three different telephony options. VoIP in-house PBX, non-VoIP in-house PBX, and Centrex, which the CIO stated was prepared by City staff in late 2002

or early 2003.¹¹ However, the cost analysis in this document is limited to the consideration of these three types of telephony options for the NCC, and would not support standardization on a certain brand or manufacturer pursuant to the SJMC requirements. There is no evidence that this information was provided to the ITPB to determine whether the data was sufficient to support and recommend telephony standardization under the SJMC. There is no record of telephony standardization in any of the documents we were provided or reviewed, and telephony equipment is not listed on the ITPB's standardization effort entitled "Notes from Network Workshop." In her July 23, 2004 interview, the CIO stated that there was no standardization of telephony, not even informally.¹²

Additionally, the CIO provided us with an 11-page document dated July 2004, entitled "NCH Converged Network RFP," which includes the ITD's reasons for recommending the Converged Network System for the NCC, a copy of which is attached hereto as Attachment III. Although the document lists numerous benefits of the Converged Network System, the document fails to substantiate the significant cost savings of the Cisco-based Converged Network System in comparison to other manufacturers or other telephony and network options as required by Section 4.12.149 of the SJMC.¹³

¹¹ The analysis is fairly conclusory in that it indicates total cost for each different type of telephony solution as well as a breakdown for five major components of the different telephony options, including telephone services; network services; server, storage, backup, security, misc.; desktop cabling; and facility fiber connectivity. We cannot determine the basis for those numbers from the analysis. Other dollar amounts in the analysis are also summary in nature in that they include total costs with no breakdown of cost components. The totals shown in the analysis for each of the possible solutions were: VoIP in-house - \$21,255,000.00; non-VoIP in-house PBX - \$21,105,855.00; and Centrex - \$27,619,800.01. Staff told us that these early numbers were based upon non-discounted equipment quotes from vendors.

¹² A reason given by the CIO for no telephony standardization is that the VoIP telephony system is so integrated with the data system that it could be considered the same system. However, others interviewed stated that at a bare minimum, the VoIP telephones and call managers required for the system are not integral parts of the data system and can be non-Cisco brand. In fact, others, including Cisco employees, explained that Cisco makes at least one piece of alternative equipment (blade) that was not listed in the RFP BOM that enables use of non-Cisco VoIP telephones and call managers.

¹³ Section 2 on p. 4 of the July 2004 document incorrectly explains the SJMC requirements for standardization in that the threshold requirement for standardization is that the standardization must be required for health, safety and welfare, which is not the case here, or that there is a significant cost savings to the City. It is only after the determination of significant cost saving is made, and the City determines that the standard leads to the purchase of a single brand or trade name, that the City is required to also consider the six other factors listed as Subsections A-F in SJMC Section 4.12.149. In the instant case, staff considered the factors listed in Subsections A-F without engaging in the threshold significant cost savings analysis.

With regard to standardization on Cisco equipment, others, including a Deputy City Manager, the E-Government Program Manager, the GSD Director, and the Network Operations Manager, stated that the City did not perform any cost analysis for standardization to Cisco equipment. Staff decided to standardize on Cisco equipment primarily because of concerns with warranties and maintenance when problems arise.

As chair of the ITPB Network Subcommittee, the E-Government Program Manager recalls that the Network Subcommittee was given direction to find pieces within the City network that could be standardized, and then to make its best decisions without regard to cost. The decision to standardize on Cisco was made because of the large existing City inventory of Cisco equipment and technical staff's familiarity with Cisco equipment for maintenance and troubleshooting purposes.

Although all of the factors staff stated, including the July 2004 document from the CIO, may be valid regarding RFP standardization to a single brand or trade name under Subsections A through F of SJMC Section 4.14.129, the City did not meet the threshold criterion to enable authorization of standardization. Specifically, staff did not demonstrate that the standardized equipment required in the RFP would produce a significant cost saving to the City. There is no documentation that staff ever provided such information to the GSD Director for consideration, as the SJMC requires, to support the extensive equipment purchase element of the RFP. The CIO, the Deputy CIO, and the GSD Director all told us that staff did not prepare any cost-benefit analysis to support the decision to standardize on Cisco equipment for the Converged Network System RFP, but that they inputted a financial benefit based upon an overriding perception of cost savings relating to existing staff training to maintain and troubleshoot problems, quality of service, and warranty concerns that arise with multiple vendors.¹⁴

¹⁴ The CIO provided us with a March 24, 1999 memorandum from a former Systems and Network Coordination Supervisor to a former Acting GSD Director requesting the standardization of network switching equipment to Cisco Systems technology pursuant to Section 4.12.149 (Standardization) of the Municipal Code. IT staff, including the current Deputy CIO, received copies of this 1999 standardization request. However, neither the ITD nor the GSD could provide evidence that the GSD Director approved the March 24, 1999 request for standardization of switches.

We recommend that:

Recommendation #1

The City Attorney review with the City Manager's Office and the General Services Department the need for clarifications or other amendments to the SJMC standardization provisions. (Priority 2)

What Was Cisco's Participation In The RFP Process?

We found that City ITD management and staff worked in close partnership with Cisco during the Converged Network RFP process. Based upon our review of all documents provided to us by staff and Cisco, we have concluded that, contrary to representations made by staff to the City Council at its June 22, 2004 meeting and later to members of the Offices of the City Attorney and Auditor during this investigation, Cisco's participation in the RFP process was significant and pervasive. To the extent we can determine, Cisco's participation in the RFP process began in May 2003, and extended through June 2004. Cisco's participation in the RFP process included 1) the design of the Converged Network System, 2) assisting staff to prepare the RFP, 3) preparing several versions of the BOM that constituted the entire equipment and software requirements for the RFP and included over 18,000 items, 4) assisting staff with vendor and small business issues raised during the RFP process, 5) providing staff with answers to the technical questions vendors posed during the RFP process, and 6) participating in numerous meetings with staff regarding various aspects of the entire RFP process. A timeline of the E-Mails that chronicle Cisco's participation in the RFP process and other project milestones is shown in Attachment IV.

Cisco Designed The Converged Network System

During the course of our review, City ITD staff represented that they had designed the Converged Network System and that Cisco had reviewed their design to ensure functionality. We found that Cisco had essentially designed the Converged Network System, including a 13-page BOM listing 348 separate hardware and software-related products, totaling 18,276 items. The BOM was included in the RFP as Attachment E, which vendors used in developing their cost proposals for the Converged Network System. Between August 2003 and January 2004, at the City's request, Cisco provided ITD with at least five versions of the BOM.

An E-Mail from a Cisco Major Account Manager to the TMG Consultant indicated that the City provided Cisco with the information and requirements to architect the complete converged network design. The E-Mail dated March 23, 2004 stated,

Last items were the information and requirements provided by the City that we used to architect our complete converged network design:

- a. 99.999% reliability for data, voice, and video in the future were required
- b. Port density requirements per closet
- c. 10 GigE Uplinks to the Core
- d. Standardization across all platforms (ease in sparing, learning curve, future proof)
- e. Service modules in switches (enhance security multiple areas, monitor performance)

(Emphasis added.)

Cisco Provided Guidance And Information During The RFP Process, Including Responding To Vendor Questions

During the course of our review, City ITD management and staff maintained that Cisco was not involved in the RFP process. However, we found that during the RFP process, at the City's request, Cisco provided assistance and guidance on the following:

- In an E-Mail dated March 3, 2004, a Cisco Systems Engineer provided ITD staff with specific language to include in the RFP sections that pertained to IP telephony and security requirements. This language was included in pages 54-55 of the RFP.
- In an E-Mail dated February 22, 2004, a Cisco Systems Engineer provided ITD staff with a specific network diagram. Staff included a network diagram as Attachment G of the RFP.
- Cisco also reviewed and assisted staff to respond to the 15 questions vendors posed in anticipation of the March 6, 2004 pre-proposal conference. On March 23, 2004, the Deputy CIO forwarded the vendor questions to a Cisco Major Account Manager for her to review and determine which questions Cisco could help answer. On March 24, 2004, a Cisco Systems Engineer provided ITD

staff and the TMG Consultant with suggested text for responding to vendor questions about Cisco Safe Security.

- The Converged Network RFP Project Manager explained that Cisco provided ITD with examples of past Cisco-specific RFPs. He acknowledged using the Cisco-provided RFPs in developing the Converged Network RFP as well as sample RFPs obtained from other sources.

Additionally, Cisco invited ITD staff to participate in an April 14, 2004 meeting with the Product Manager and Technical Engineer that support the 6500 Switch, a component of the Converged Network System. One aspect of this meeting entailed an overview on “Why Buy Cisco and the Catalyst 6500 Switch.” We also found that ITD staff worked with Cisco on revising the BOM after the award process.

ITD Management And Staff Had Extensive Communications With Cisco Throughout The RFP Process

Throughout the audit process, the CIO and Deputy CIO denied having any communication with Cisco or that Cisco participated in the RFP process after staff issued the RFP on March 15, 2004, except for contacting a Cisco Channel Account Manager to discuss a specific vendor’s relationship with Cisco and non-RFP related issues.¹⁵ We found that after staff issued the RFP, ITD management and staff had repeated communications and meetings with Cisco staff, including a Major Account Manager and Systems Engineer. Based on E-Mail records, staff discussed technical specifications of the converged network, the Converged Network RFP process, and RFP issues and problems. The communications are documented in the timeline which is Attachment IV hereto, and include the following:

- March 18, 2004 - Cisco’s Major Account Manager E-Mails the Deputy CIO regarding a possible protest by Nortel. The Major Account Manager asks the Deputy CIO if she wants “anything from me to help combat this moving

¹⁵ The CIO admitted contacting a Cisco Major Account Manager to discuss Verizon’s relationship with Cisco.

- forward?” The City’s Deputy CIO responds “Any word on who they plan to protest to?” Cisco’s Major Account Manager responds to the Deputy CIO with “No it’s just threats right now – will keep you posted.”
- March 22 and 23, 2004 - the Deputy CIO and Cisco’s Major Account Manager exchanged several E-Mails regarding arranging a lunch meeting to discuss the “RFP process and responses...”
 - March 23, 2004 - the Deputy CIO E-Mailed a Cisco’s Major Account Manager the pre-proposal questions the vendors submitted so she could review and later strategize on what questions Cisco could help answer. The E-Mail contained attachments of the vendors’ questions. Cisco’s Major Account Manager responded to the Deputy CIO that she would review the questions and call to discuss the questions and answers. The Cisco employee also indicated that she forwarded the questions to her extended “team mates [sic] as well to gather all the resources that will be needed ...”
 - March 26, 2004 - the CIO E-Mailed a Cisco Bay Area Region Manager to ask for assistance in responding to concerns the Chairman of the Small Business Development Commission had raised. Namely, that the RFP was not accommodating to small and local businesses. Specifically, the CIO wrote, “I need your help. The chair of the Small Business Commission ... is likely to complain to Council Members that the network infrastructure project needs to be “chunked” up in order to allow small businesses to provide a proposal on some portion of the overall project. I know I can say that the City is looking for a complete integrated solution (end-to-end) and must minimize the risk of multiple vendors pointing fingers at each other when the telephone doesn’t have dial tone or the network doesn’t work, but I don’t think that will be good enough for the Council. Can I get help in answering the question, in the case it comes up?”
 - On March 29, 2004, the Chairman of the Small Business Development Commission E-Mailed five City Council members and the GSD Director regarding his concerns about the Converged Network RFP. He indicated that he attended the Converged Network System pre-proposal conference on March 26, 2004, and was concerned that the RFP was not accommodating to

small and local businesses. The CIO forwarded this E-Mail to a Cisco Major Account Manager and Regional Sales Manager asking to “discuss the implications of this on the RFP process and outcomes.”

- On July 21, 2004, a Cisco Major Account Manager acknowledged providing key information to the CIO that she used in her post-RFP justification of a Cisco-specified converged network.
- The CIO indicated that Cisco reviewed, but did not design, the BOM in the RFP. According to documents provided by a Cisco Senior Litigation Manager, the CIO asked Cisco to prepare a letter to the CIO that acknowledged that Cisco provided its partners with assistance during the RFP process and denied any knowledge of the City’s specific requirements and specifications for the converged network project. The Cisco Senior Litigation Manager later acknowledged the statement regarding Cisco’s knowledge of the RFP was inaccurate and provided the City Auditor’s Office and City Attorney’s Office with E-Mails between Cisco staff and City staff.

Further, we should note that during the City Council’s June 22, 2004 meeting, the CIO stated “May I make a clarification. As I was responding to Councilmember Yeager’s question with regard to the involvement of Cisco, I failed to note that after that initial review of how the Network was shrunk, shall I say, Cisco was not involved in any of the process in terms of the development of the RFP. And I want to make that perfectly clear. Their involvement stopped at the point where we got confirmation that the proposed solution was a viable solution, and that it would meet the City’s performance requirements. They did not have advanced notice of the RFP, they did not involve themselves in preparation of the RFP, I just wanted to make that clarification.” (Emphasis added.) In our opinion, the CIO’s representation to the City Council is clearly at variance with the documented record as shown in Attachment IV. During the same meeting the City Manager told the City Council, “...clearly what it is not is a vendor driven process.”

Finally, Cisco's involvement in the RFP process was significant and pervasive and calls into question the process the City used to select an appropriate solution and vendor for the Converged System Network.

We recommend that:

Recommendation #2

The Administration develop a policy to require a formal contract with scope of service and nondisclosure provisions for non-compensated outside parties who are providing technical or specialized assistance to the City. (Priority 3)

Did A Former City Deputy CIO Violate The City's Revolving Door Policy After Leaving City Employment In September 2003?

Based upon our review of all available documents and discussion with involved parties, we found insufficient evidence to support the allegation that the former Deputy CIO violated the City's revolving door policy.

SBC alleges that the former Deputy CIO may have violated the City's revolving door policy.

SJMC Section 12.10.030, which is commonly referred to as the City's "revolving door policy," states:

12.10.030 Prohibitions.

For one year immediately following the termination of city or agency office or employment, no former city or agency official or designated employee shall:

- A. Work on any matter on which the official or employee worked on behalf of the city or agency during the twelve months prior to termination of service.
- B. Represent anyone else, whether or not for compensation, before the city council, redevelopment agency board, any commission thereof, or any staff of the city or agency.
- C. Receive any gift or payment which would be prohibited under Part 5 of this chapter from any person who was, in any way, involved in or affected by the work of the official or employee during the twelve months prior to the termination of service.

SBC claimed that the current Deputy CIO spoke on the telephone with the former Deputy CIO during SBC's presence, and that upon hanging up the phone the current Deputy CIO said she had been talking to the former Deputy CIO. In our interview of SBC, two SBC representatives also asserted that the Mayor's Budget and Policy Director told them, the day before the City Council directed the City Manager to begin contract negotiations with

Unisys, that he didn't know the former Deputy CIO had left City employment until recently. As a result of these pieces of information, and E-Mails later provided by the City in response to public records requests by SBC, SBC concluded that the former Deputy CIO might improperly be dealing with the City on this project on behalf of Unisys. SBC also was concerned that Unisys may have debriefed the former Deputy CIO upon his employment there about the nature of his projects with the City of San Jose, thereby giving Unisys a possible advantage over other competitors.¹⁶

The records related to the NCC Converged Network System project include documentation of the former Deputy CIO's involvement with the project during his employment with the City of San Jose. September 17, 2003 was the former Deputy CIO's last day of employment with the City. The former Deputy CIO left his position with the City for employment with Unisys as a Senior Manager in the North America Public Sector Solutions Group.

In the July 23, 2004 telephone interview with the former Deputy CIO, he indicated that he is familiar with the City's revolving door policy and has had nothing to do with the Unisys proposal for the Converged Network System project for the NCC. He provided information that he is not working with the Unisys group that prepared the response to the RFP for Unisys, nor did Unisys debrief him upon his employment about his former City projects. The current Deputy CIO and the Mayor's Budget and Policy Director indicated that they have not spoken to the former Deputy CIO about the Converged Network System project for the NCC since his departure from City employment.

According to the current Deputy CIO, her only conversations with the former Deputy CIO since his departure from City employment have been about his new baby and a request for his phone number she had received. More specifically, upon one occasion prior to issuance of the instant RFP, when she received a call from SBC requesting the

¹⁶ The sources of the original SBC allegations are the June 25 and 28, 2004 letters from SBC Senior Legal Counsel Mary Vanderpan to City Attorney Richard Doyle, and the July 20, 2004 interview with Jennifer Jackson, Bob Campbell, and Ms. Vanderpan of SBC and SBC outside counsel Neal O'Donnell. SBC has added E-Mail communications derived from its public records requests to the reasons for its allegations.

former Deputy CIO's phone number. The current Deputy CIO did not release the former Deputy CIO's phone number to the SBC employees, but instead called the former Deputy CIO to let him know that they were attempting to contact him.

The Mayor's Budget and Policy Director told us that he has not spoken to the former Deputy CIO about the Converged Network System RFP. He recalled that during a meeting with SBC about one week before the City Council meeting on the RFP, SBC asked him if he had spoken to the former Deputy CIO about the RFP since he had left City employment and gone to work for Unisys. The Mayor's Budget and Policy Director responded to SBC that he did not even know that the former Deputy CIO had left City employment.

In the July 21, 2004 interview with the Network Operations Manager, he stated that he had limited contact with the former Deputy CIO after his departure from City employment. The Network Operations Manager stated his contact was limited to asking the former Deputy CIO if he could recommend a consultant to assist the City with the RFP. He said the former Deputy CIO offered to make others at Unisys available to assist the City to help draft the RFP, but both men expressed knowledge about rules prohibiting former City employees and their current employers from doing business with the City. There is no evidence in our possession about any consulting or work related to the RFP after this limited exchange, which is recorded in E-Mail messages during mid-January 2004.¹⁷

¹⁷ E-Mail messages in January 2004 indicate that City's Network Operations Manager contacted several other people in addition to the former Deputy CIO, none of whom appear to be Unisys employees, to obtain a recommendation for a consultant who might assist the City in drafting the RFP. Specifically, with regard to the City's revolving door policy, in E-Mail messages sent the morning of January 14, 2004, both City's Network Operations Manager and former Deputy CIO expressed concern about the revolving door policy and the need to review those prohibitions. But then in an E-Mail message to former Deputy CIO sent a few hours later, on the afternoon of January 14, 2004, City's Network Operations Manager states that although he has asked staff to look in to "rules" regarding previous employees, "things are very accelerated and so having a contractor perform network design and draft an RFP for it doesn't seem possible." It appears that all communication on the subject of a consulting reference from former Deputy CIO or any use of Unisys consulting services ended at that point.

During the July 26, 2004 interview of the CIO, a Deputy City Manager relayed that she contacted the former Deputy CIO's supervisor at Unisys who confirmed to her that the former Deputy CIO has not worked on any City-related projects since his employment with Unisys. The former Deputy CIO provided the City Auditor's Office with a Unisys organizational chart indicating that he is not on the project delivery team for the City Converged Network System RFP. Rather, project management and supervision is with the Unisys Western Region Infrastructure, Technology and Services Group.

We have insufficient evidence to establish that the former Deputy CIO violated the City's revolving door policy.

Was The RFP Evaluation Process Fair, Objective, And Accurate?

In our opinion, the NCC Converged Network overall evaluation process was on balance fair, objective, and accurate. However, we did note some issues during various phases of the evaluation process. Of particular concern is the adequacy of the request for and subsequent review of one of the minimum qualifications requirements. In our opinion, a more rigorous process may have materially affected the selection of the three vendor finalists. In addition, beginning on page 30 of this report, we address the question, “was the City’s analysis of the final three vendors’ cost proposals complete and accurate?”

At the City Council’s direction, the City formed the Senior Staff Team for this project to recommend a vendor for the Converged Network for the NCC. A Deputy City Manager, the City’s CIO, and the GSD Director were on the Senior Staff Team. The City also hired an outside consultant and assembled a support team and a working group comprised of staff from ITD and GSD to develop an RFP and assist with the evaluation for the NCC Converged Network.

The City received a total of six responses to its Converged Network for the NCC RFP. The Evaluation Team, consisting of six City ITD employees¹⁸, evaluated the six proposals in the following four separate phases.

- Phase 1 – Minimum Qualifications and Experience: Per the RFP in the Phase 1 evaluation, the City would perform an initial evaluation of the qualifications and experience of the firm. Proposers scoring the highest in the Phase 1 evaluation would then undergo a technical evaluation in Phase 2.
- Phase 2 – Qualifications, Experience and Technical Approach: Based on the qualifications, experience and technical approach review, the Converged Network Evaluation Team, scored all six vendors and then selected the top three scoring vendors to go to the Phase 3 evaluation. The Evaluation Team made a presentation to the Senior Staff Team. The Team recommended three finalists to move to Phase 3. These were: 1) Norstan, 2) SBC, and 3) Unisys.

¹⁸ In addition, one external IT professional from an outside government agency participated in Phase 3.

- Phase 3 – The Evaluation Team observed demonstrations from all three vendors and interviewed each of the three finalists.
 - Phase 3A – counted for 40 percent of the final score. The Team scored the vendors on the following criteria during the demonstrations: 1) Features and Functionality; 2) Project Management; 3) Technology; and 4) Final Questions.
 - Phase 3B – This phase counted for 60 percent of the final score. The vendors were graded on the following criteria from the vendor responses in the cost proposals and the technical clarifications. These were: 1) Resource Loading; 2) Project Timelines; 3) Statement of Work; and 4) Reference Checks. Furthermore, the Evaluation Team also did a Pass/Fail assessment on the following: a) Certification Requirements and b) BOM Certification. For the organization criteria, the ITD Administrative Officer and a Finance Department Financial Analyst performed the vendors' financial viability analyses.

At the end of Phase 3, the Evaluation Team scored and ranked the three finalists as shown below.

Company	Final Score
Unisys	247.9
SBC	220.8
Norstan	218.9

Source: Auditor analysis of Application Group provided scores

We should note that the above Final Score does not include the external IT professional scores. The Senior Staff Team decided to exclude his scores because he missed several hours of vendor presentations. Had staff included the external IT professional scores the Final Scores would have been Unisys 247.7, Norstan 223.1, and SBC 221.3.

- Phase 4 – Final Technical Requirements and Cost Proposals. Vendors responded to a series of technical questions and submitted their cost proposals.

In our opinion, overall, the City conducted the evaluation process fairly, objectively, and accurately. The SJMC #4.13.040 states that *“In determining the most advantageous proposal to the city, the following factors shall be considered: 1. Cost to the city; 2. Quality of the proposal; 3. Capabilities and expertise of the contractor; 4. Adherence to applicable city council policies; and 5. Status of the vendor as a local business enterprise and/or small business enterprise in accordance with Section 4.06.040 of Chapter 4.06 of this title.”* We discuss Factor 1 - Cost to the City in detail beginning on page 30. In Attachment V, we show how staff considered Factors 2, 3, and 4. Staff discussed Factor 5 in its June 16, 2004 memorandum to the City Council. However, we did identify the following issues that occurred during various phases of the evaluation process.

- During Phase 1, the GSD/Purchasing Division only screened the proposals to ensure that the vendors submitted all required documents. The Evaluation Team did not score the proposers in Phase 1 but rather combined the Phase 1 review and scoring with Phase 2.
- Although the Evaluation Team included the evaluation of the vendors' minimum qualifications in Phase 2, we found that one of the three finalists did not appear to meet the minimum qualification that *“At least one reference must be from an organization with over 1,000 data and voice connections in the United States.”* Had staff adequately reviewed this minimum qualification, staff may not have selected this vendor as a finalist. We also found that the RFP did not specifically request the number of connections in the Reference Template section of the RFP. The GSD Purchasing Agent acknowledged that since staff did not specifically request in the RFP for vendors to identify a reference with “over 1,000 data and voice connections”, and the vendor did not provide one, this vendor may not meet this minimum qualification.
- Staffs' memorandum regarding the RFP discussed at the June 22, 2004 City Council Meeting stated *“Panelists rated SBC as failing in the ‘key project assumptions’ category...”* However, we found that only two of the six evaluators failed SBC in the Project Assumptions category. Since a majority of the

evaluators had passed SBC, in our opinion, staff should have accurately described the rating in its June 16, 2004 memorandum to the City Council.

- The RFP did not state the relative importance of price and other factors and subfactors. According to the ABA's 2000 Model Procurement Code for State and Local Governments regarding evaluation factors, *"The Request for Proposal shall state the relative importance of price and other factors and subfactors, if any."* According to the ABA, the subsection serves two purposes, *"First, a fair competition necessitates an understanding on the part of all competitors of the basis upon which award will be made. Second, a statement of the basis for award is also essential to assure that the proposal will be as responsive as possible so that the jurisdiction can obtain the optimum benefits of the competitive solicitation. The requirement for disclosure of the relative importance of all evaluation factors and subfactors applies to the areas or items that will be separately evaluated and scored, e.g. the items listed on the evaluation score sheets.* It further states that *"A statement in the RFP of the specific weighting to be used by the jurisdiction for each factor and subfactor, while not required, is recommended so that all offerers will have sufficient guidance to prepare their proposal."* Although the City is not required to follow the ABA's Procurement Code, in our opinion, the City should at least include in its RFPs the relative importance of price and other factors and subfactors.
- The RFP includes price as an evaluation criteria. However, the Evaluation Team did not consider price when rating the vendors. According to the GSD Purchasing Agent, the City should look for ways to improve on how the City evaluates and scores responses to RFPs and considers price relative to other evaluative factors.

In our opinion, the City should treat these issues and errors as lessons learned for future procurements. Accordingly, we recommend that:

Recommendation #3

The City structure its RFPs to facilitate the evaluations of minimum qualifications requirements. (Priority 3)

Recommendation #4

The City include in its RFPs the relative importance of price and other factors and subfactors. (Priority 3)

Recommendation # 5

The GSD work with the City Attorney to look for ways to improve how the City evaluates and scores responses to RFPs and considers price relative to other evaluative factors. (Priority 3)

Was The City's Analysis Of The Final Three Vendors' Cost Proposals Complete And Accurate?

The CIO and the GSD Director presented a June 16, 2004 memorandum entitled "Report On RFP For A Converged Network For The New City Hall (NCH)" to the City Council at its June 22, 2004 meeting. (See Attachment VI)

The memorandum included a recommendation calling for "Adoption of a resolution authorizing the City Manager to negotiate an agreement with Unisys (Blue Bell, PA), for the purchase of a Converged Data Network and Telephony System in an amount not to exceed \$8,030,127 including all hardware, software and professional services required to implement the system".

The memorandum also included a "Cost Comparison" for the final three vendors — Unisys, SBC, and Norstan. We reviewed the cost comparison in the June 16, 2004 memorandum for completeness and accuracy. We found that some of the items in the cost comparison were not accurate and/or complete and that the memorandum left out some RFP-required items that would have increased 1) the total amount of the contract and 2) the dollar disparity among the final three vendors as shown below.

**Summary Of Comments Regarding The Cost Comparison Shown In The
Administration's June 16, 2004 Memorandum**

	Unisys	SBC	Norstan
Base Solution Cost In June 16, 2004 Memorandum	\$7,621,467	\$7,401,855	\$8,492,091
RFP-Required Item Adjustments To The Base Solution Cost			
Comprehensive Security System	\$408,660	\$247,771	--
On-going Maintenance and Support	\$968,839	\$821,050	\$703,729
End-User Training	--	(\$36,690)	--
Bill of Material Adjustment		(\$30,000)	
Adjusted Base Solution	\$8,998,966	\$8,403,986	\$9,195,820
Other Not Clearly Defined RFP Items			
Items Included In The Cost Comparison			
Customer Support Programs	\$76,156	\$277,175	\$236,700
Items Excluded From The Cost Comparison			
Readiness Assessment		\$32,171	
IP Phone Placement		\$51,273	
Ninety Day Post Go-Live Support (Onsite)		\$40,804	
WAN Assessment			\$42,500

We determined that the cost comparison presented to the City Council left out RFP-required costs associated with a comprehensive security system, on-going maintenance and support, end-user training, and training for ITD technicians. Additionally, SBC transposed a number in its BOM pricing summary.

Comprehensive Security Solution

Section 3.23 of the Converged Network RFP established 18 security requirements that vendors were required to address in their proposal. The June 16, 2004 memorandum to the City Council stated, "Unisys demonstrated the most comprehensive network and security infrastructure solution presented by any vendor. They placed significantly more emphasis on critical network and security aspects of the solution than the other vendors."

However, we found that staff did not include the costs associated with providing comprehensive security solutions in the Cost Comparison it included as part of its June 16, 2004 memorandum to the City Council. Unisys' base solution included \$408,660 for security planning. Staff included the \$408,660 in its June 16, 2004 memorandum as an addition to the Cost Comparison to arrive at the \$8.030 million contract amount shown in its memorandum. SBC's base solution included \$247,771 in security components or \$160,889 less than Unisys'. According to the City's consultant, Norstan security cost appeared to be integrated in its base solution. Accordingly, we increased base solution cost in the June 16, 2004 memorandum to reflect these security components.

On-Going Maintenance And Support

RFP Section 3.18 required that vendors submit various proposals for on-going service and support (maintenance). The June 16, 2004 report to the City Council indicated that "the recommended contract award does not include on-going system maintenance support, estimated at \$750,000 annually. ...Staff will explore Unisys supplying this maintenance support..." However, all three vendors submitted on-going maintenance and support cost proposals. Unisys' cost proposal for on-going maintenance and support was the highest at \$968,839 per year, SBC's cost proposal was \$821,050 per year, and Norstan's cost proposal was \$703,729 per year. Accordingly, since the RFP required vendors to submit on-going maintenance and support, we included one year's worth of maintenance and support to the base solution cost in the June 16, 2004 memorandum.¹⁹ Excluding all maintenance and support from the cost proposals understates the total cost of the project and skews the comparison among the proposers.

End-User Training

RFP Section 3.12 required vendors to provide a training plan for training 2,000 end users. This training must be held on City premises and be tailored specifically to the City's particular requirements. We determined that SBC included \$36,690 for the required end-

¹⁹ The RFP stipulated that on-going maintenance support would be for three to seven years.

user training for 2,000 users. However, Unisys included only \$22,847 for “train the trainer” training for a small number of users, who will in turn train the remainder of the users. Accordingly, we reduced SBC’s base solution cost shown in the June 16, 2004 memorandum by \$36,690 to adjust for this disparity.²⁰

SBC BOM Adjustment

In the detailed BOM pricing SBC provided, the total cost of hardware was \$5,855,105. However, SBC transposed a number and mistakenly overstated its cost proposal by \$30,000 on its cost proposal summary sheet. Accordingly, we reduced SBC’s base solution cost shown in the June 16, 2004 memorandum by \$30,000.

Other Not Clearly Defined RFP Items

The RFP contained elements that were not clearly defined and it is not clear how staff should have treated them in its Cost Comparison. These RFP items include the following:

- Unisys, SBC, and Norstan proposed customer support programs of \$76,156, \$277,175 and \$236,700, respectively. However, these proposals were not clearly defined in Unisys’ and SBC’s proposals according to the Consultant. Due to this lack of clarity we are not sure how to treat this cost element. Staff included these comments in the base solution cost shown in its June 16, 2004 memorandum.
- SBC’s proposal included options for readiness assessment, IP phone placement, and 90-day post go-live support which totaled \$124,248. Staff did not include this \$124,248 in its base solution cost in its June 16, 2004 memorandum.
- Norstan’s proposal included an optional Wide Area Network Assessment for \$42,500. Staff did not include this \$42,500 in its base cost solution in its June 16, 2004 memorandum.

²⁰ Norstan’s cost proposal included the IT Technical requirement, the end-user training, and “train the trainer” training.

We should note that staff's Cost Comparison did not include a RFP-required item for technical training for ITD staff. Furthermore, we also found that after the vendor selection process the City subsequently initiated a separate contract for this required training for a total cost of \$198,000. In our opinion, staff should have included this item in its June 16, 2004 memorandum in order to alert the City Council of an additional cost item.

We should also note that, according to the Application Group Consultant that did the analysis of the final three vendors' cost proposals, he had only 10 days to analyze the cost proposals. Given this limited time, he did not ask vendors to clarify any ambiguities in their proposals or request that they provide any additional information.

Was The RFP Process For The Procurement Of “General Services” The Appropriate Procurement Process?

The RFP for the NCC Converged Network System complied with the requirements for contracts for general services in SJMC Chapter 4.13 and the resulting contract is not required to be awarded to the lowest responsible bidder.

SJMC Chapter 4.13 governs the award of contracts for general services. Chapter 4.12 governs the award of contracts for the purchase of supplies, materials and equipment.

SBC claims that because a significant portion of the RFP includes equipment purchases, the RFP is really a competitive equipment bid that is required to be awarded to the lowest responsible bidder under SJMC Chapter 4.12.²¹

Section 4.13.010.A defines general services broadly as “any work performed or services rendered by an independent contractor, with or without the furnishing of materials.” and then includes a list of the types of services that are considered general services ranging from the repair and modification of City equipment and software, to demolition of nuisances, to providing other miscellaneous services to facilitate department operations. (Emphasis added.) Section 4.13.010.B states that “[g]eneral services shall not include any public works project as defined in Section 14.04.140 or any purchases of materials, supplies or equipment.”

There appears to be some inconsistency between Subsections A and B of SJMC Section 4.13.010 in that Subsection A authorizes the furnishing of materials in a general services contract, while Subsection B appears to preclude such purchases in a general services contract. However, a reasonable interpretation of Subsection B is that contracts for general services cannot include public works projects as defined in Section 14.04.140 or

²¹ The source of SBC’s complaint is the July 20, 2004 letter from SBC legal counsel Neal O’Donnell to City Attorney Richard Doyle.

any purchase of materials, supplies or equipment pursuant to Chapter 4.12 which deals with the subject of materials, supply and equipment purchases only that do not include any related services.

In the instant case, although the BOM in RFP Attachment E includes an extensive equipment list, the fact that the equipment is specified in the RFP is not determinative of whether the procurement should have been performed by bid or request for proposal. In fact, the language of SJMC Section 4.13.010.A anticipates that a contract for specialized services may also include the purchase of materials related to the provision of those services.

Virtually everyone with technical expertise interviewed in this process indicates that it is the specialized technical services and expertise of the system integrator in system installation, troubleshooting and the like, that is at the core of the success of the Converged Network System -- especially with a project of this magnitude. In fact, in our interview with SBC representatives, they claimed that because SBC has more experience and knowledge of City systems than anyone else and because of SBC's familiarity with the integration of Cisco installations, the City should have awarded the contract to SBC on the basis of SBC's experience and familiarity as well as cost. SBC's reliance on the extensive equipment list as proof that this Converged Network System contract process should have proceeded as an equipment bid is misplaced. Even if the RFP had not included a BOM, much of the cost of the Converged Network System would still have been associated with the purchase of necessary hardware and software with the remaining costs attributable to the specialized services for network design and integration.

In our opinion, the RFP for the NCC Converged System Network complied with the requirements for contracts for general services in SJMC Chapter 4.13, which specifically authorizes the purchase of materials with services. The resulting contract for services and materials is not required to be awarded to the lowest responsible bidder.

We recommend that:

Recommendation #6

SJMC Section 4.13.010 be amended to clarify that the request for proposal method of procurement is authorized where the provision of services and the purchase of equipment are integral to each other in accomplishing the purpose of the project and the services are not merely incidental to the equipment purchase. (Priority 3)